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Letter dated 3 May 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/118). The Counter-Terrorism Committee has received the attached fifth report from Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 1 May 2005 from the Permanent Representative of Kazakhstan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to forward to you the comments of the Republic of Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001), which address the questions contained in the letter from the Chairman of the Counter-Terrorism Committee dated 2 February 2005 (see enclosure).

(*Signed*) Yerzhan **Kazykhanov**

Enclosure*

[Original: Russian]

Replies of the Government of the Republic of Kazakhstan to the questions posed by the experts of the Counter-Terrorism Committee concerning the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 In accordance with Government decision No. 167 of 24 February 2005, a draft law amending and supplementing certain legislative acts of the Republic of Kazakhstan on the maintenance of national security, prepared by the National Security Committee, was submitted to and is currently under consideration by the Majlis (lower chamber) of Kazakhstan's Parliament.

This draft law provides, inter alia, for the insertion in the Criminal Code of a new article 233-3 entitled "Financing extremist and terrorist activities".

The procedure for applying this provision of the Criminal Code and other legal aspects of the efforts to combat terrorist financing are outlined in the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism, prepared by the Agency for the Suppression of Corruption and Economic Crime, together with other interested Government agencies. The draft law is to be submitted to Parliament in August or September 2005. As a rule, Parliament completes its consideration of draft laws within two months.

1.2 The legislation currently in force does not establish criminal liability on the basis of the intention to commit an action. However, the Criminal Code does contain article 24, "Planning and attempted commission of an offence", under which:

- Planning an offence is defined as, with direct intent, finding, making or adapting the means or instruments for the commission of an offence, finding accomplices to an offence, conspiring to commit an offence or otherwise intentionally creating the conditions for the commission of an offence, where the offence is not completed owing to circumstances independent of the individual's will;
- Criminal liability is incurred only for planning a grave or especially grave offence;
- Attempting an offence is defined as the commission, with direct intent, of actions (omissions) directly aimed at the commission of an offence, where the offence is not completed owing to circumstances independent of the individual's will;
- Criminal liability is incurred only for attempting an intermediate, grave or especially grave offence;

* Annexes are on file with the Secretariat and are available for consultation.

• Criminal liability for planning or attempting an offence is incurred under the same article of the Criminal Code as for the completed offence, with reference to the relevant section of the article.

For information:

"Article 9. Concept of offence

The commission of a socially dangerous action (omission) prohibited by this Code and punishable under it shall be considered an offence. The application of criminal law by analogy is not allowed.

An action (omission) that nominally contains elements of an act referred to in the Special Section of this Code but does not pose a danger to society on account of its insignificance, i.e. is an action that does not cause damage or risk causing damage to individuals, society or the State, shall not be considered an offence.

"Article 10. Categories of offence

1. Acts referred to in this Code shall be subdivided, according to their nature and the degree of danger they pose to society, into lesser, intermediate, grave and especially grave offences.

2. Intentional acts punishable under this Code by imprisonment for not more than two years and negligent acts punishable under this Code by imprisonment for not more than five years shall be considered lesser offences.

3. Intentional acts punishable under this Code by imprisonment for not more than five years and negligent acts punishable under this Code by imprisonment for not more than five years shall be considered intermediate offences.

4. Intentional acts punishable under this Code by imprisonment for not more than 12 years shall be considered grave offences.

5. Intentional acts punishable under this Code by imprisonment for more than 12 years or by the death penalty shall be considered especially grave offences."

1.3 (i) Information on the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism is contained in paragraph 1.1 (the draft law is reproduced in annex I).

(ii) A financial monitoring body is to be established pursuant to the draft law (chapter 3 of the draft law).

It is provisionally intended to establish this body within the Office of the Procurator General.

(iii) There is no provision in Kazakh law under which legal persons may be held criminally liable. Legal persons may incur civil or administrative liability.

Under article 21 of the Act "On combating terrorism", the activities of civil society organizations and international organizations engaging in terrorist activity may be suspended on the basis of an application by the Procurator General.

When a civil society organization declared to be a terrorist organization is shut down by decision of a court, property belonging to it is confiscated and becomes State property.

When a court declares an international organization to be a terrorist organization, the activities of this organization are prohibited in the territory of Kazakhstan, its branches are shut down and property belonging to them or to the international organization itself is confiscated and becomes State property.

See also article 7 of the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism, which is reproduced in annex I.

(iv) The Act of the Republic of Kazakhstan "On the accession of the Republic of Kazakhstan to the Convention on the Physical Protection of Nuclear Material" was adopted on 28 December 2004. With the adoption of this Act, Kazakhstan became a party to all 12 international counter-terrorism instruments.

In 2004, agencies of the National Security Committee arrested 11 persons who had attempted to carry out unlawful transactions involving radioactive materials; five of them have since been convicted. A number of articles of a precautionary or preventive nature were published in the national mass media. Also, in response to the repeated publication of accusations that Kazakhstan is not complying with the international regime for the non-proliferation of nuclear and radioactive materials, an official statement by the National Security Committee was placed in the mass media. Relevant information was sent to the Ministry of Foreign Affairs for the preparation and transmittal to the American side of a protest note through the diplomatic channel.

1.4 Response to paragraph 1.4

No funds belonging to the individuals apprehended by the Kazakh authorities for involvement in planning terrorist acts (as mentioned in the fourth report of Kazakhstan) were frozen: first, because no funds were discovered; and, second, because, even if they had been, there would have been no legal grounds for freezing them.

1.5 It should be noted that the draft law reproduced in annex I takes account of the 40 recommendations and 9 special recommendations of the Financial Action Task Force on Money Laundering (FATF).

1.6 The National Security Committee Anti-Terrorism Centre was established in 2004. Its terms of reference include liaising with similar structures abroad in order to combat international terrorism. Prevention of access to weapons by terrorists is one aspect of that activity.

Draft agreements on cooperation in combating the illicit traffic in arms, ammunition and explosives and on combating terrorist activity by mercenaries have been prepared and approved within the framework of the Regional Anti-Terrorism Structure of the Shanghai Cooperation Organization. Similar efforts are under way within the Council of Heads of Security Agencies of the countries of the Commonwealth of Independent States (CIS), the CIS Anti-Terrorism Centre, the Collective Security Treaty Organization and the Organization of Central Asian Cooperation.

A number of practical results have been achieved. In 2004, the activities of a highly secretive terrorist organization, the Zhamaat of Mojaheddin of Central Asia, which was active in the territory of four CIS countries and constituted a link in the Al-Qaida network, were uncovered and suppressed, foiling its plans to commit a string of terrorist acts and establish bases in Kazakh territory to train its fighters.

The measures taken led to the arrest of leaders, members and accomplices of the organization, six of whom were Uzbek citizens. In addition, 17 Kazakh citizens were arrested for aiding and abetting terrorists, including four women trained as suicide bombers. Currently, 16 persons are being prosecuted; judicial hearings are continuing.

Two Kazakh citizens who, on the instructions of Al-Qaida members from the United Arab Emirates, were seeking sites in Zhambyl region for the establishment of bases to train fighters are being prosecuted.

A channel was uncovered via which Uzbek citizens were being conveyed in transit across the territory of Kazakhstan, Azerbaijan and the Islamic Republic of Iran on a route through Shymkent, Aqtaū, Baku, Zakhedan and Peshawar to undergo training in terrorist camps in Pakistan.

Three Kazakh citizens (E. Taizhanov, A. Toleubai and A. Zhulbaev) were arrested for participating in the activities of an illegal paramilitary group in Chechnya. In April 2005, two of them were convicted of mercenarism. In addition, five Russian citizens, members of illegal Chechen armed gangs who had fled to Kazakhstan, were arrested and extradited to the Russian Federation.

In the context of their efforts to combat the illicit traffic in arms and ammunition, in 2004 agencies of the National Security Committee confiscated 71 firearms, more than 4,000 different types of ammunition, 301 kilograms of explosives, 13 grenades and 3 improvised explosive devices.